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TRANSMITTAL FORM

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Application Number	09/418,536
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First Named Inventor	Daniel J. Powers
Art Unit	3762
Examiner Name	Frances P. Oropeza
Attorney Docket Number	PHA 24285

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- ☐ Fee Transmittal Form
  - ☐ Fee Attached
- ☐ Amendment/Reply
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	W. Brinton Yorks, Jr. Reg. #28,923
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Date	7/15/04

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

In re the Application of

Inventors	:	**Daniel J. Powers et al.**
Application No.	:	**09/418,536**
Filed	:	**October 14, 1999**
For	:	**METHOD AND APPARATUS FOR PROVIDING ON-SCREEN INCIDENT REVIEW IN AN AED**

REQUEST FOR REINSTATEMENT OF APPEAL

Honorable Board of Patent Appeals and Interferences:

Pursuant to 37 CFR 1.193(b)(2)(ii), appellants hereby request reinstatement of the appeal in this case filed December 17, 2003 and supported by the Appeal Brief filed March 19, 2004 and the Supplemental Appeal Brief filed concurrently herewith. Any fees associated with this submission are authorized to be charged to Deposit Account No. 14-1270.

Respectfully submitted,

DANIEL J. POWERS ET AL.

By: W. Brinton Yorks

W. Brinton Yorks, Jr.
Reg. No. 28,923

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Inventors	:	**Daniel J. Powers et al.**
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SUPPLEMENTAL APPEAL BRIEF

On Appeal from Group Art Unit 3762

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July 15, 2004

I. REAL PARTY IN INTEREST

The real party in interest is the assignee of the present application, Koninklike Philips Electronics, Eindhoven, Netherlands.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-16 and 18-28 stand finally rejected and form the subject matter of the present appeal. This Supplemental Appeal Brief is responsive to an Office action mailed June 22, 2004 which reopened prosecution of this case under 37 CFR 1.193(b)(2) and again rejected Claims 1-16 and 18-28.

IV. STATUS OF AMENDMENTS

No amendments were submitted in response to the Final Rejection mailed September 17, 2003. A Request for Reconsideration After Final Rejection submitted on October 20, 2003 was entered.

V. SUMMARY OF THE INVENTION

The summary of the invention in section V of the original appeal brief in this case is hereby incorporated by reference.

VI. ISSUES

1. Whether Claims 1-12, 14 and 18-28 stand correctly rejected under 35 U.S.C.§102(e) or § 103(a) as allegedly being unpatentable over Skelton et al. (U.S. 6,292,692).

2. Whether Claims 4 and 12 stand correctly rejected under 35 U.S.C.§103(a) as allegedly being unpatentable over Skelton et al. (U.S. 6,292,692) in view of Rockwell et al. (US 6,141,584).

3. Whether Claims 13 and 15-16 stand correctly rejected under 35 U.S.C.§103(a) as allegedly being unpatentable over Skelton et al. (U.S. 6,292,692) in view of Powers et al. (US 5,879,374).

VII. GROUPING OF CLAIMS

Claims 1-16 and 18, comprising an independent method claim and its dependent claims, are drawn to a method of reviewing incident data on an external defibrillator and stand or fall together. Claims 19-28, comprising an independent apparatus claim and its dependent claims, are drawn to an external defibrillator and stand or fall together. It is respectfully submitted that these two groupings should be separately considered, as the method of the first group can be practiced on apparatus other than that of the second group.

VIII. ARGUMENT

The new rejection of the June 22 Office action rejects Claims 1-12, 14 and 18-28 under Sections 102(e) and 103(a) in view of Skelton et al. In substance this is the same as the final rejection which rejected the same claims under Section 103(a) in view of Skelton et al. and Rockwell et al. And in substance the Examiner's arguments against patentability of these claims is the same also. The first two pages of argument of this rejection (pages 2-3 of the Office action) are virtually word-for-word identical to the final rejection argument discussed in the original Appeal Brief. It is only page 4 and the first half of page 5 of the Office action where any new argument appears. This argument suffers from the same deficiency as that of the final rejection as explained in the Appeal Brief, which is that the words which the Examiner desires to find or infer in Skelton et al. are simply not there. For one example, in the middle of page 4 of the new Office action the Examiner states that:

"Accumulated data, including recorded ECG data, is displayed"

citing col. 12, lines 10-16 of Skelton et al. However, a reading of the cited passage shows only half of this is correct. The cited passage says that three traces of accumulated data are displayed to the user. This passage, like all others in the patent, is silent as to any display of recorded (stored) ECG data on the Skelton et al. system.

The last sentence of the next paragraph on page 4 of the new Office action highlights the patentability of the present case. Here again the Examiner says that Skelton et al. teaches the display of two traces, one of currently monitored ECG data and the second of recorded ECG data. In support of this proposition the Examiner cites two passages: one in col. 13 for the display of currently monitored data and another in col. 12 for the display of recorded data. Looking at the exact words of the

col. 12 passage, it is stated that "three graphical traces may be generated from accumulated data and displayed." The passage in col. 13 describes a control block 236, "which determines whether accumulated data is to be stored." It is clear from the latter passage that "accumulated data" is data that has not been stored. "Accumulated data" is clearly currently monitored ECG data, it is not recorded (stored) data. Thus it is eminently clear from a side-by-side reading of these two passages that the three graphical traces generated from "accumulated data" are three traces of currently monitored data and nothing else. They are, in fact, three traces of current data from three of the treatment modules 12-16. None of the traces can be a display from recorded ECG data as the Examiner would like one to be.

In the paragraph spanning pages 4-5 of the Office action the Examiner again tries to argue that Skelton et al. teaches simultaneously displaying previously recorded and currently monitored information on a screen, but again the cited passages do not support such an argument. The needed words and inferences are simply not there. The Examiner cites col. 6, lines 15-25 for the proposition that recorded data is made available for review, but a reading of this passage shows a reference to "log functions" and the "logging" of data. The paragraph spanning cols. 10-11 of the Skelton et al. patent make clear that "log" data is displayed on a print-out by a strip printer module. There is no hint of a video display of the logged data, let alone a simultaneous display with current information. Consequently it is respectfully submitted that this new argument suffers from exactly the same deficiencies as the previous argument as explained in the original Appeal Brief. It is simply not supported by the citation. Appellants stands by their position in the Appeal Brief as to Claims 1-12, 14 and 18-28.

In the second ground of rejection of the new Office action, the Examiner rejects Claims 4 and 12 under Section 103(a) in view of Skelton et al. and Rockwell et al. This is exactly the same rejection as was made of these claims in the final rejection and addressed in the original Appeal Brief. The words of the new rejection are identical to those of the final rejection. Appellants stand by their position in the Appeal Brief as to this rejection.

Finally, the Section 103 rejection of Claims 13 and 15-16 in the new Office action is word-for-word identical to that of the final rejection, except that reference to Rockwell et al. is omitted. Consequently, appellants stand by their position in the Appeal Brief as to this rejection.

IX. CONCLUSION

There is no new ground of rejection when the basic thrust of the rejection remains the same. See MPEP §1208.01. In the new Office action the only changes are more references to the same sections of Skelton et al. as before, and a narrowing of the support for the rejection by dropping the use of Rockwell et al. from the first and third rejections. Consequently the new Office action does not necessarily constitute a new ground of rejection. See *In re Kronig*, cited in MPEP §1208.01.

In the first paragraph of the new Office action the Examiner states that the appellants' appeal was fully considered and is convincing. Appellants fully agree. It is respectfully requested that this Honorable Board concur in this judgment and

reverse all grounds of rejection stated in the Final Rejection (which now appear to be withdrawn) and in the new Office action.

Respectfully submitted,

DANIEL J. POWERS ET AL.

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X. APPENDIX: THE CLAIMS ON APPEAL

1. (Previously presented) A method of reviewing incident data on an external defibrillator having a screen, comprising:

deploying the defibrillator for use in an emergency, wherein the defibrillator is attached to a patient;

monitoring ECG data from the patient;

recording the monitored ECG data in memory; and

activating an incident review mode in which the previously recorded ECG data stored in memory and the currently monitored information are displayable simultaneously on the defibrillator screen of the defibrillator while the patient is being monitored by the defibrillator without the need to attach the defibrillator to another external device for display, and said recorded ECG data also being displayable offline.

2. (Original) The method of claim 1 further comprising:

retrieving the recorded ECG data from memory; and

replaying the recorded ECG memory on a visual image generator.

3. (Original) The method of claim 1 wherein the activating step is accomplished by user intervention.

4. (Original) The method of claim 2 wherein the replaying step occurs automatically without user actuation of n activation button.

5. (Original) The method of claim 1 wherein the recording step includes recording audible data received from a microphone into memory.

6. (Previously presented) The method of claim 2 wherein the replaying step further comprises replaying audible data recorded into memory during the recording step.

7. (Previously presented) The method of claim 2 wherein prior to the replaying step, a user select which information is replayed.

8. (Previously presented) The method of claim 7 wherein the user selects from the group consisting of: ECG data, audible data, and a combination of ECG and audible data.

9. (Previously presented) The method according to claim 1 wherein the ECG data is selected from the group consisting of: patient ECG data and patient data therapy.

10. (Previously presented) The method of claim 2 wherein the replaying step is activated by the user depressing soft keys.

11. (Previously presented) The method of claim 2 wherein the replaying step is activated by the user depressing a combination of soft keys.

12. (Original) The method of claim 1 wherein the incident review mode is activated in response to disconnecting the patient from the defibrillator.

13. (Original) The method of claim 1 wherein the incident review mode is activated in response to insertion of a battery.

14. (Original) The method of claim 1 further comprising the step of displaying a legend on a visual image generator that the defibrillator is event review mode.

15. (Previously presented) The method of claim 2 wherein the replaying is optional and the replaying option is presented to a user when the defibrillator is turned off.

16. (Previously presented) The method of claim 2 wherein the replaying is optional and the replaying option is presented to the user when a battery is inserted into the defibrillator.

17. (Canceled).

18. (Original) The method of claim 17 wherein the replaying step further comprises displaying currently monitored ECG data along with the recorded ECG data retrieved from memory.

19. (Previously presented) An external defibrillator comprising:

a controller;

an energy delivery system operable by the controller to deliver an electrical shock from an energy source to an electrode interface;

memory for recording incident data;

a screen;

an incident review activator; and

an incident review output comprising a visual image generator, wherein the incident review output retrieves the incident data from memory upon activation of the

incident review activator by the user and simultaneously displays the retrieved incident data on the defibrillator screen and the current patient monitoring while the patient is being monitored by the defibrillator without requiring communication with an external device.

20. (Original) The external defibrillator of claim 19 wherein the incident review output also comprises an audible sound generator.

21. (Original) The external defibrillator of claim 20 wherein the memory is selected from the group consisting of: flash, EEPROM, ROM and RAM.

22. (Original) The external defibrillator of claim 20 wherein the incident review output also comprises an audible sound generator.

23. (Original) The external defibrillator of claim 19 wherein the incident review activator is a soft key.

24. (Original) The external defibrillator of claim 19 wherein the incident review activator is a combination of soft keys.

25. (Original) The external defibrillator of claim 19 wherein the defibrillator further comprises incident review navigators.

26. (Original) The external defibrillator of claim 24 wherein the incident review navigators enable a caregiver to advance or replay the incident.

27. (Previously presented) The external defibrillator of claim 26 wherein the incident review navigator is a soft key.

28. (Original) The external defibrillator of claim 26 wherein the incident review navigator is a combination of soft keys.